

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

REGINALD MC FADDEN,

Plaintiff,

v.

No. 9:03-CV-931
(LEK/DRH)

JOHN MITCHELL, et al.,

Defendants.

ORDER

In an order filed November 29, 2004, all further proceedings in the above captioned case were stayed pending a final decision on defendants' anticipated dispositive motion. Docket No. 53. That motion was filed and in a Report-Recommendation filed May 6, 2005, the undersigned recommended that the motion be denied. Docket No. 73. However, the Report-Recommendation further ordered that defendants' application for a stay pending a final decision be denied. Id. By letter dated June 2, 2005, counsel for defendants requested clarification of the conflicting orders regarding a stay. Docket No. 76. Counsel correctly notes the conflict and clarification is appropriate.

The original stay of proceedings pending a final decision on defendants' motion was appropriate given the dispositive nature of defendants' motion. The denial of the stay in the Report-Recommendation was, therefore, in error. Accordingly, it is hereby

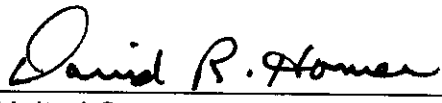
ORDERED that the Report-Recommendation (Docket No. 73) is hereby **AMENDED** to the limited extent that the order denying defendants' application for a stay is **VACATED** and

the stay contained in the November 29, 2004 order (Docket No. 53) remains in full force and effect; and

IT IS FURTHER ORDERED that lifting the stay and the entry of a scheduling order permitting discovery will be considered, if necessary, following the entry of a final decision on defendants' motion by the district court.

IT IS SO ORDERED.

Dated: June 3, 2005
Albany, New York


United States Magistrate Judge